IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Appeal No. 495-DB of 2003.
DATE OF DECISION: 15.1.2007.
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Major Singh.

..APPELLANT

VS.

State of Haryana.

..RESPONDENT

CORAM: HON'BLE MR. JUSTICE MEHTAB S. GILL.
HON'BLE MR. JUSTICE ARVIND KUMAR,

Present:- **Ms. Anju Arora, Advocate**
for the appellant.

Mr. Kulvir Narwal, Addl. A.G. Haryana.
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ARVIND KUMAR, J.

Manjinder Kaur @ Bholi, was found murdered on 15.12.1999 A trial for attempting to commit rape and thereafter murder of Manjinder Kaur was held against the appellant Major Singh by the court of learned Addl. Sessions Judge, Fatehabad, which has culminated in his acquittal for the offence under Section 376 IPC read with Section 511 IPC . However, he has been held guilty for committing an offence under Section 302 of Indian Penal Code and has been sentenced to undergo rigorous imprisonment for life with a fine of Rs.5000/- and in default thereof to further undergo rigorous imprisonment for a period of six months. This has necessitated filing of present criminal appeal by the appellant to challenge the conviction and sentence recorded against him.

Background facts, as culled out from the judgment of the trial court are essentially as follows:-

On 14.12.1999 Manjinder Kaur, deaf and dumb daughter of informant Charan Singh, resident of village Nathuwal had gone outside in

the evening to play. When he did not return home, search was made for her but no clue was made available. Thereafter, on 15.12.1999, in the morning her dead body in a semi naked condition with injuries beneath the right eye, nose and ear and neck throttled with salwar string, was found lying in the fields of Mohan Singh, Ex-sarpanch of Nathuwal village. On the basis of statement (Ex.PG) made by Charan Singh, FIR No. 121 dated 15.12.1999 (Ex.PG/2) for the commission of offences under Sections 302/376/511 IPC was registered at Police Station Jakhal. Investigations were carried out. Inquest report (Ex.PE) was prepared by the Investigating Officer Parkash Chander (PW-12). Scene of crime team was summoned and Sahab Singh Chandana, Senior Scientific Assistant (PW4) lifted the blood stained earth from the place of occurrence, which was sealed and taken into possession vide recovery memo Ex.PC and rough site plan (Ex.PL) of the place of occurrence was prepared. Photographs (Ex.P-1 to Ex.P-4 & negatives Ex.P-5 to Ex.P-8) of the dead body of Manjinder Kaur were clicked by Virender Singh, Phtographer (PW.1). The dead body was sent to Civil Hospital, Tohana for post-mortem examination where a Board consisting of Dr. Satish Garg (PW.5), Dr. Sunil Bajaj and Dr. Poonam Grover conducted autopsy on the dead body. The Board found ligature mark of 8 cm in width around the neck regularly below the thyroid cartilage and bluish colorization on face, lips, around the eyes and peripheral region of the dead body. Besides, two incised wounds one below the left eye and another in front of left ear with clotted blood were noticed on the dead body and report (Ex.PF) was prepared. According to the Medical Board, the cause of death was due to asphyxia as a result of strangulation, which was sufficient to cause death in the ordinary course of nature. After conducting the post-mortem examination, the Board handed over duly stitched dead body, sealed parcel containing the clothes of deceased, police papers running into 15 pages, signed by them with sample seal and copy of post mortem examination.

On 26.12.1999, pursuant to a secret information, the accused Major Singh was apprehended by the police party. The tractor and trolley being driven by him were taken into police possession vide recovery memo (Ex.PK), rough site plan (Ex.PK/1) of the place of recovery of tractor and trolley was prepared. During the course of interrogation, the accused

suffered a disclosure statement (Ex.PI) and further led the police party to the place of occurrence. Accordingly spot identification memo (Ex.PJ) was prepared. The accused was medically examined by Dr. H.L. Gupta (PW13) vide report (Ex.PO). Thereafter, on completion of investigation, a challan was put in Court against Major Singh.

After examining the record, the trial Court was of the view that a prima facie case under Sections 376 IPC read with Section 511 IPC and 302 IPC was made out against the accused and accordingly framed the charges against him. Since the accused pleaded not guilty to the charges, the prosecution was called upon to lead evidence.

To bring home the charges, the prosecution examined Virender Singh Yadav, Photographer as PW1, Indraj Singh, Patwari as PW-2, Const. Narender Singh as PW-3, Dr. Sahab Singh Chandana as PW-4, Dr. Satish Garg as PW-5, Charan Singh complainant as PW-6, Dev Vart Head Constable as PW-7, Harpal Singh son of Mohinder Singh as PW-8, Paramjit Singh son of Mohan Singh as PW-9, Gurdayal Singh son of Kehar Singh as PW-10, Banarsi Singh, retired Inspector as PW-11, Parkash Chander SI/SHO as PW-12 and lastly Dr. H.L. Gupta as PW-13. Besides, report of FSL (Ex.PQ) was tendered in the evidence of prosecution.

The accused when examined under Section 313 Cr.P.C. denied all the circumstances and asserted that he was innocent and had been falsely implicated in this case. He, however, led no evidence in defence.

The trial court after hearing the arguments came to the conclusion that the charge against the accused under Section 376 IPC read with Section 511 IPC is not established and accordingly acquitted him of the said charge. However, so far as charge under Section 302 IPC is concerned, the trial court, as noticed above, held the appellant guilty and sentenced him in the manner indicated above.

We have heard learned counsel for the parties and with their assistance have also gone through the record carefully.

There is no direct evidence in this case. The case rests on the circumstantial evidence. Where the evidence is purely circumstantial in nature, the facts and circumstances from which the conclusion of guilt is sought to be drawn must be fully established beyond any reasonable doubt

and such circumstances must be consistent and unerringly point to the guilt of the accused and the chain of circumstances must be established by the prosecution.

Recently in **Ramreddy Rajeshkhanna Reddy & Anr. V. State of Andhra Pradesh, 2006 (2) R.C.R. (Criminal) 462,** the Hon'ble Supreme Court has held that " with a view to base a conviction on circumstantial evidence, the prosecution must establish all the pieces of incriminating circumstances by reliable and clinching evidence and the circumstances so proved must form such a chain of events as would permit no conclusion other than one of guilt of the accused". However, the circumstantial evidence led by the prosecution in the instant case does not satisfy the said test. A motive assumes greater importance when the case rests on the circumstantial evidence. However, the prosecution has failed to prove the motive. The apparent motive, so suspected by the prosecution, i.e. attempt to rape has been negatived by the medical evidence. PW5 Dr. Satish Garg, who had conducted the post-mortem examination on the dead body of Manjinder Kaur has opined that organ of generation were not having any injury and the hymen was intact. He also opined that if any effort is made to commit rape on a female of the age of 6 to 8 years, the injury on the genital organ is possible. However, he admitted that there was no injury on the genital/ female organ of the dead body.

Admittedly, the prosecution could not prove the accused having made any extra judicial confession before Mohan Singh, ex-sarpanch on account of death of said Mohan Singh. The learned State counsel has laid must stress on the circumstance relating to the pointing out of the place of occurrence by the accused, after his arrest. The prosecution again cannot derive any benefit from this circumstance. The accused-appellant Major Singh was arrested by PW-11 Banarsi Dass, the then Inspector, on 26.12.1999. He was interrogated and by virtue of his disclosure statement (Ex.PI), he led the police party and pointed out the place of occurrence i.e. back side of village High School of Nathuwal in the sugarcane fields of Mohan Singh. Accordingly, memo Ex.PJ was prepared. This place is exactly the same from where the dead body of Manjinder Kaur had already been recovered on 15.12.1999 and subsequently at the pointing out of PW-6 Charan Singh, the police prepared rough site plan (Ex.PL). Therefore, the

police was already aware of the place of occurrence and then subsequent discovery of the place of occurrence by virtue of the disclosure statement of the accused is not admissible as the same is hit by Section 27 of the Indian Evidence Act. In **Thimma Vs. The State of Mysore AIR 1971 Supreme Court 1871,** it has been held that a fact already discovered from other sources cannot be discovered afresh even if relevant information is extracted from the accused. Since the police had already known the said place of occurrence prior to the preparation of spot identification memo (Ex.PJ), in view of the dicta of the Hon'ble Supreme Court in Thimma's case (supra), this circumstance is again of no help to the prosecution.

The another circumstance which prosecution relied is with regard to the “last seen”. In this context, the prosecution has examined PW8 Harpal Singh and PW9 Paramjit, the employer of the accused Major Singh. PW8 Harpal Singh has stated that on the date of occurrence at about 4.30 p.m. he saw accused Major Singh coming out of the sugarcane crops of the fields of Mohan Singh ex-sarpanch. He was under the influence of liquor. His clothes below hands and lower portion of the legs upto the knee were stained with earth and on asking the accused replied that he had fallen down. He was also found to be perplexed and then accused Major Singh left to City Tohana carrying the tractor trolley. PW9 Paramjit Singh has also stated in the similar fashion. But it is not convincing as to in what manner this is incriminating circumstance against the appellant-accused. It has come in evidence that Pala Ram had taken a contract of cutting the Eucalyptus trees in Government High School, village Nathuwal and for this purpose he had employed PW8 Harpal. The accused Major Singh was the partner (siri) of PW9 Paramjit Singh and the accused used to drive the tractor of Paramjit Singh for transporting the woods in the said tractor trolley. Even on the date of occurrence, he had transported the woods to village Meond Kalan in the tractor trolley and had returned at about 10.30 a.m. and then remained there till he was seen by PW8 Harpal and PW9 Paramjit Singh. Therefore, the presence of the appellant was not unnatural, as he was there in connection with transporting the wood from that very village. It is nobody's case if the deceased Manjinder Kaur @ Bholi was seen in the company of the accused on the date of occurrence. PW8 Harpal has rather stated that he had not seen Bholi playing near the place where he had seen Major Singh in a perplexed

condition. This circumstance, thus, cannot be considered as a circumstance of “last seen together”. Merely by the fact that the appellant was under the influence of liquor and in a perplexed condition and that his clothes were smeared with mud, which can obviously for many reasons, no such inference can be drawn that he committed the crime, especially in view of the fact that his presence, as discussed above, was not unnatural. There is no evidence that on any previous occasion, the appellant had been making any advances towards the deceased and as said above there is also no evidence that the deceased-victim and the accused were seen together at any point of time in a close proximity within the time and date of commission of crime. Thus, in absence of such evidence mere coming of the accused from the sugarcane fields where his presence if otherwise natural, as discussed above, this circumstance is not sufficient to establish the guilt of the accused. Even in those cases where the deceased was seen last in the company of the accused, it has been held in number of cases that this circumstance by itself is not sufficient for establishing the guilt of the accused. In this context reference can be made to the dicta of the Hon'ble Supreme Court in the cases of **Inderjit Singh and another V. State of Punjab, AIR 1991 Supreme Court 1674** and **Anant Bhujangrao Kulkarni vs. State of Maharashtra, AIR 1993 SC 110.** However, the instance case is on better footing for want of any evidence of having seen the deceased in the company of the accused-appellant immediately prior to the occurrence. Further PW6 Charan Singh, in his statement, has stated that Harpal Singh and Paramjit Singh were also associated when search was made for his daughter and subsequently at the time of recovery and in this situation had PW.8 Harpal Singh and PW.9 Paramjit Singh seen the accused-appellant coming out of the sugarcane fields of Mohan Singh, on the date of occurrence, they, expressing suspicion, would have conveyed this to PW.6 Charan Singh and this fact would be reflected in his statement Ex.PG, on the basis of which FIR was registered. However, there is no such reference in the first information report. PW.6 Charan Singh though only in his cross-examination has stated that Paramjit Singh and Mohan Singh had named the accused as suspect, but he had not disclosed the same to the police in his statement Ex.PG. This is only an afterthought and an improvement as he had also not said so in his statement made in affirmative

before the Court as PW.6. It can also not be lost sight that as per PW.6 Charan Singh, PW.7 Harpal Singh and PW.8 Paramjit Singh, the police had already visited their village in the morning of 15.12.1999 i.e. prior to the registration of case and in case of any suspicion against the accused-appellant, the same could be brought to the notice of the police, having reflection in the FIR as well.

No doubt, the accused-appellant in this case was arrested on 26.12.1999 i.e. after about 11/12 days of the occurrence but mere absconding by itself does not necessarily lead to a firm conclusion of guilty mind. Even an innocent man may feel panicky and try to evade arrest when wrongly suspected of a grave crime: such is the instinct of self-preservation. This certainaly cannot be held as a determining link in completing the chain of circumstantial evidence consistent only with the hypothesis of the guilt of the accused. In **Rahman v. The State of U.P. AIR 1972 SC 110,** the Hon'ble Supreme Court has observed in the following manner:-

> "21. It is true that the appellant was concealing himself for nearly a month though he must have known that he was wanted by the Police and that he left his wife to face the situation alone. But absconding by itself is not conclusive either or guilt or of a guilty conscience. For a person may abscond on account of fear of being involved in the offence or for any other allied reason".

In view of the discussion made above, the prosecution has miserably failed to prove any of the circumstance against the accused what to say of proving the chain of circumstances. The court cannot be allowed the suspicion to take the place of proof. It is a matter of great regret and concern to everybody that for this murder nobody could be punished. The present accused-appellant, thus, cannot be punished unless the court can be sure of his guilt. He certainly deserves the benefit of doubt. We, therefore, allow this appeal and set aside the judgment and order of conviction and sentence passed against the appellant. The accused-appellant is acquitted giving benefit of doubt. He be set at liberty, if not required in any other case.

(ARVIND KUMAR)
JUDGE

JANUARY 15 ,2007 **(MEHTAB S. GILL)**
Jiten **JUDGE**